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## Memorandum

Date: May 13, 1999

To: William J. Lyons, Jr., Secretary  
Department of Food and Agriculture

From: Lester A. Snow  
Executive Director

Subject: Response to California Department of Food and Agriculture's Agricultural Impacts Mitigation Plans

Thank you for your April 8, 1999 memo and issue paper on the CALFED Programmatic EIS/R. Like you, I have a strong interest in ensuring that the Programmatic EIS/R meets all requirements of CEQA and NEPA, so that it can withstand possible legal challenges.

To this end, CALFED has retained staff and consultants with extensive backgrounds and expertise in CEQA and NEPA. In addition, we are utilizing the resources of the Attorney General and his staff to provide a rigorous legal review.

We have carefully reviewed the issue paper prepared by your staff, as well as suggestions for inclusion in the Programmatic EIS/R made by your staff earlier this year. As a result of those suggestions and an analysis by our staff, I will be meeting with you and Resources Secretary Nichols on May 17 to discuss issues of concern involving agricultural land preservation and mitigation for impacts to agricultural resources in a statewide context.

I am also attaching an analysis of your staff's issue paper. There are a number of areas in the paper with which we agree, but there are others that will require further discussion. While there are a number of issues concerning CALFED and agriculture, I am confident that the draft Programmatic EIS/R currently meets statutory requirements for assessing, disclosing and mitigating environmental impacts. Remaining issues should more appropriately be addressed in the context of CALFED program discussions or statewide policies.

Thank you for your continuing interest and assistance in moving the CALFED Programmatic EIS/R forward. I look forward to meeting with you to discuss agricultural land conservation issues.

Attachment

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**CALFED Agencies**

California    The Resources Agency  
                  Department of Fish and Game  
                  Department of Water Resources  
                  California Environmental Protection Agency  
                  State Water Resources Control Board

Federal      Environmental Protection Agency  
                  Department of the Interior  
                  Fish and Wildlife Service  
                  Bureau of Reclamation  
                  U.S. Army Corps of Engineers

Department of Agriculture  
                  Natural Resources Conservation Service  
Department of Commerce  
                  National Marine Fisheries Service

## Analysis of Issue Paper

Within the Issue Paper are a number of recommendations for agricultural land and water mitigation policies and mitigation measures. A number of these policies and measures have been discussed between CDFA and CALFED staff over the past several months, and a number of them are currently incorporated in the Administrative Draft Programmatic EIS/EIR. Among the mitigation strategies discussed in the Issue Paper which are already included in the PEIS/R are:

- Working with local landowners and local governments in developing project configurations;
  - Establishing buffers for agricultural lands;
  - Supporting agricultural easement or transfer-of-development-right programs;
  - Examining structural as well as non-structural alternatives for meeting project goals, to protect agricultural lands;
  - Phasing project implementation to avoid agricultural impacts.
- More than twenty other mitigation strategies to reduce agricultural impacts are included in the PEIS/R.

We will also be pleased to add several mitigation strategies to the PEIS/R which are suggested in the Issue Paper:

- Reaffirm the State's Right-to-Farm Policy;
- Provide that future project-level CEQA documents use the NRCS LESA model to evaluate impacts, if appropriate;
- Provide measures that will allow farmers to continue operations adjacent to new wetlands.

The current Administrative Draft PEIS/R also includes a Mitigation Monitoring Program, as required by CEQA.

There are several areas covered in the Issue Paper, however, with which we disagree, and which remain items for discussion. These are described in detail below, but the major items are summarized as:

- Creation of a new governmental entity to monitor mitigation strategies contained in the PEIS/R;
- A new agricultural mitigation standard requiring CALFED to provide up to three-to-one replacement of converted agricultural lands;
- Replacement of water used for wetlands purposes by supplying an equivalent amount to agriculture in general;
- Establishment of an Agricultural Water Account to supply replacement water to agriculture;
- Revision of the Levees Program and related common programs to use repair of existing levees as the preferred flood management strategy.

We anticipate that these items will constitute the major discussion areas for the meeting between Secretary Nichols, Secretary Lyons and Lester Snow on May 17.

We have the following comments on the Issue Paper:

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- The Issue Paper quotes Appendix G of the CEQA Guidelines regarding agricultural impacts. It should be noted that this Appendix was revised when new CEQA Guidelines became effective in January of 1999, and that the treatment of agricultural impacts was changed. Under the current Guidelines, Appendix G provides a checklist for an Initial Study to determine whether an EIR must be prepared. Appendix G lists three determinants for significant environmental impacts related to agriculture: 1) If Prime, Statewide Important or Unique farmlands are converted to other uses; 2) If there are conflicts with agricultural zoning or Williamson Act lands; and 3) If there are other changes in the environment that could lead to the conversion of agricultural lands to non-agricultural uses. A determination to prepare an EIR was made early in the process. The CALFED Programmatic EIS/EIR is consistent with the 1999 CEQA Guidelines, rather than pre-existing Guidelines. The new regulations affect any CEQA document whose certification occurs after the date that the new Guidelines were accepted into regulation.

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- A proposed mitigation policy is that CALFED will carry out a "comprehensive environmental evaluation" for projects that may adversely affect agricultural resources. The standard under CEQA is that an Initial Study will determine whether there is a significant impact. If there is, an EIR is prepared; if not, a Negative Declaration is prepared. For instance, it is unlikely that a project affecting a half-acre portion of a large dry-farmed operation would receive a "comprehensive environmental evaluation." The scale of the evaluation should fit within the parameters of the CEQA Guidelines.
- CALFED Agricultural Mitigation Entity - How the many mitigation strategies included in the PEIS/R will be monitored is a subject in the ongoing Governance discussions. A new monitoring entity is more appropriately addressed in that discussion, and we will ensure that monitoring of the programmatic mitigation strategies is included.
- Protection of equivalent or greater farmland for conversions - This is a statewide, rather than just CALFED, agricultural land mitigation issue. The attachment proposes a one-to-one up to three-to-one agricultural land protection for each acre converted under CALFED actions. Replacement of substitute agricultural lands is not a standard used in any of the program-area County General Plans reviewed for CALFED. It is not used by cities rapidly expanding onto agricultural land, such as Fresno or Modesto. This should be addressed in a statewide discussion of agricultural conversion mitigations, including all involved stakeholders and include other types of projects

- Water Supply Reliability - While this is certainly an issue for discussion within the CALFED programs, it is not a direct environmental impact under CEQA. If there is a willing water seller, there does not appear to be any direct impact. The reference to Water Code Section 10910 is only applicable when local jurisdictions approve new projects which will involve a general plan or specific plan amendment to allow a net increase in population density within their jurisdiction. This will still apply to local jurisdictions if they plan to increase local population density.

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- Agricultural Water Account - Water directed from agriculture to other uses on a general basis cannot be considered an environmental impact under CEQA. Offsite mitigation for which there is no environmental impact under CEQA is not required, and sets a new state standard. If, in a project-level CEQA review, it is found that a specific area may lose water, resulting in permanent conversion of agricultural lands, mitigation may be appropriate. An environmental impact to agriculture, under Appendix G, occurs when agricultural land is converted to non-agricultural use. The loss of irrigation water to a particular parcel does not create a conversion: under State and federal classifications for soil types, prime agricultural land remains classified as prime as long as irrigation infrastructure remains available. Also, the land could be dry-farmed or put into a crop requiring less irrigation water. Statewide, projects such as wetlands mitigation banks or subdivisions that use water formerly used for irrigation do not replace that water to agriculture or other former uses of that water on either a statewide or local basis.
- Development Agreements - It is unclear how this local planning tool, usually including details of landscaping, infrastructure financing and color schemes, could be used for habitat projects. This section deals more with financial compensation for displaced farmers, which is not an environmental impact under CEQA. As discussed in the Programmatic EIR/EIS, this is, however, a policy issue that will need to be addressed when individual projects are evaluated.

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- Flood Easements vs. Levee Setbacks - This is another area where discussion should take place within the program, so that feasibility can be determined. The proposal in the Issue Paper is a fundamental change in the Levee Program, which would impact other CALFED common programs as well. The discussion of a change at this level would have needed to occur during development of the Levee Program, and been discussed with the appropriate agencies and stakeholders. This proposal would affect flood control, change modeling of impacts throughout the system, and could potentially be very costly with few real benefits to agriculture. It is beyond the scale of a mitigation measure.
- Planned Unit Development - This city planning tool does not translate well to a series of regional ecosystem restoration efforts. A more appropriate action, again not a mitigation, would be the use of Development and Operations Plans or General

Development Plans, as used by the Departments of Fish and Game and Parks and Recreation on their properties.

- Exclusive Agricultural Zoning - This does not seem to fit as a mitigation measure for a regional program. It is wholly within the realm of local governments.
- Mitigation Implementation - Again, this subject is more appropriately raised in the governance discussions. While the Programmatic EIR/EIS will have a mitigation monitoring program, the creation of a new entity is more appropriately addressed in a forum that looks at all aspects of governance.

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- Enforceable Through Permit Conditions - Unlike many local government actions, CALFED projects will not be approved through a Conditional Use Permit as used in cities and counties. Permits issued by responsible agencies typically deal with mitigations associated with that agency's responsibilities.
- Reporting - Again, the function of issuing annual reports is a subject for the Governance process, and should be included there.
- Monitoring - As discussed above, a part of the Governance discussion.
- Enforcement - Also as discussed above, there would be no conditional approval of CALFED projects. Mitigation monitoring would be a part of any CEQA process, and will be more useful when specific mitigation measures are imposed at the project level.
- Cost Recovery - Mitigation costs are typically borne by the project applicant, or the funding agency, who may not necessarily be the CEQA lead agency.

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- The acquisition example assumes that "CALFED" will carry out these actions. It is much more likely, given the current Governance discussions, that an individual CALFED agency, such as USFWS, would carry out functions such as property acquisition.
- Impacts - Loss of high quality water historically used on the land in question is not a separate environmental impact, as discussed above. Also, an increase in water demand is not in and of itself an environmental impact under CEQA.
- Mitigation Policy 1 - This sets a new statewide standard, and as described above, should be discussed and affirmed as statewide policy for other projects as well, before being applied to CALFED.
- Mitigation Policy 2 - Change in purpose of use of water is not an environmental impact under CEQA.

- Mitigation Policy 3 - The source, funding and timing of CALFED agency water purchases, or transfers from other sources, is not pertinent unless it causes a significant environmental impact elsewhere.
- Mitigation Measure 1 - Not a statewide standard.
- Mitigation Measure 2 - Does not relate to a direct significant environmental impact.
- Mitigation Measure 3 - As long as no environmental impacts are created elsewhere (which would have to be analyzed in the environmental document if impacts were created) the source of water is not a CEQA issue requiring mitigation.

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- Implementation Measure 2 - As discussed above, there are unlikely to be conditions of approval. A mitigation oversight entity would need to be included as a subject of the governance discussion.
- Implementation Measure 3 - This is not required by CEQA, and sets a new standard. Under CEQA, certainty is provided by the certification of the Final EIR or the Negative Declaration, and the approved mitigation monitoring plan.
- Implementation Measure 4 - The role of CMARP is under discussion in the Governance process.
- Implementation Measure 5 - This is a function of the ERP program duties, and should be discussed within the Program governance process. The mitigation monitoring plan is still under discussion.
- Implementation Measure 6 - This issue relates to the overall CALFED program, and is not related specifically to agricultural impacts. It should be discussed at the overall program level.

We also note that CDFA is referred to as a Responsible Agency under CEQA. While CDFA has a number of authorities relating to agriculture in California, is not a Responsible Agency for agricultural resources as defined by CEQA. Under CEQA, Responsible Agencies are those which must issue a permit for a project to move forward, and therefore must use a project's CEQA documentation in its project-related permit deliberations. CDFA does not have permitting authority over CALFED's proposed actions, and is thus treated as a Commenting Agency. Other Commenting Agencies on agricultural land impacts can include the Resources Agency, which has the statutory responsibility for administering the California Land Conservation Act (Williamson Act) and the Department of Conservation, which operates the Farmland Mapping and Monitoring Program, has the delegated responsibility of Williamson Act administration, and administers the state's Agricultural Land Stewardship Program.